IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.343 OF 2005
IN
WRIT PETITION NO.450 OF 1997

1. Elphinstone Spinning and Weaving Mills Co. Limited, a joint stock company existing under and governed by the provisions of the Companies Act I of 1956, having its registered office at Kamani Chambers, 32, R.Kamani Marg, Mumbai-400 001.

2. Ashok Kumar Jalan of Bombay, Indian Inhabitant, residing at Hari Bhavan, 64, Peddar Road, Mumbai-400 026.
Director of Petitioner No.1. .... Petitioners

\- Versus -

1. Union of India

2. The Secretary Government of India, Ministry of Textiles and Labour Welfare.

3. National Textile Corporation Limited, a Company incor-porated under the Companies Act I of 1956, having its registered office at Suryakiran Building, 8th Floor, 19, Kasturba Gandhi Marg, Mumbai-110 001.

4. National Textile Corporation (South Maharashtra) Ltd., a subsidiary corporation of Respondent No.3 abovenamed, having their office at Ballard Estate, Mumbai-400 001. .... Respondents

Sarvasri Milind Sathe with Chirag Balsara i/b M/s. A.S. Dayal & Associates for the Petitioners.

Sarvasri Satish Shah with R.C. Master for the Respondent No.1.

Sarvasri G. Vahanvati, Solicitor General with P.K. Samdani i/b M/s. B. Kanga & Girdharlal for the Respondent Nos.3 & 4.

Sarvasri E.P. Bharucha with Z. Andhyarujina and Mohan G. Salian i/b Gagrat for the Intervenor.

CORAM: R.M.S. KHANDEPARKAR & V.M. KANADE, JJ.

DATED: AUGUST 31, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. By the present notice of motion the petitioners are seeking to restrain the respondents from selling, disposing of or alienating the properties of the Elphinstone Spinning and Weaving Mills Co. Limited. The contention of the petitioners is that in view of the advertisement issued on 22-6-2005 the intention of the respondents to utilise the assets of the said mill merely for generating funds is clear and which is totally contrary to the object for which the mills were sought to be nationalised under the Textile Undertakings (Nationalisation) Act, 1995. It is also the contention of the petitioners that the compensation fixed under the Nationalisation Act to the erstwhile company which owned the said mill is hardly around Rs.4,00,00,000/- and that too would be payable in accordance with the preference given in the Schedule annexed to the said Act which would apparently disclose that no amount would be paid

to the said company while the respondents would enrich themselves by disposing the assets of the said company. It is also the contention of the petitioners that the provisions of the said Act prohibits the disposal of the acquired property without the permission of the Government and in the matter in hand, no such permission is obtained for disposal of the property. On the other hand, it is the contention of the respondents that inspite of the best efforts on the part of the Government in providing the necessary finance for running the mill, they have been proved to be unviable and in the sanctioned BIFR scheme, the mill in question, has been clearly classified as unviable mill. It is also the contention of the respondents that there had been no restrain imposed upon the respondents althroughout the pendency of the petition though the petition was filed as long back as in the year 1997 and whatsoever restraints which were there, pursuant to the orders passed by the Apex Court, stood vacated in January, 2001.

2. Shri Milind Sathe, the learned Advocate for the petitioners, placing reliance in the decisions of the Apex Court in the matters of **Madan Mohan Pathak and another v. Union of India and others,** reported in (1978) 2 SCC 50 and **Malpe Vishwanath Acharya and others v. State of Maharashtra and another,** reported in (1998) 2 SCC 1 submitted that assuming that the Act which was

passed in the year 1995 was valid and legal, it has lost its utility in view of the subsequent events and the acts on the part of the respondents. Considering the object for which the mill was sought to be nationalised, it was apparent that it was essentially for augmenting production and securing employment and on account of the acts on the part of the respondents the same are completely frustrated and in the circumstances permitting the respondents to dispose of the property would virtually defeat the rights of the petitioners and the entire challenge in the petition would be rendered redundant in as much as that if the petitioners succeed in the petition, it would not be possible to restore the status quo ante the impugned legislation. Considering the patent arbitrariness on the part of the respondents in seeking to dispose of the properties even contrary to the specific statutory provisions under the said Act itself that no such disposal could be made without the prior permission of the Government and the fact that if such disposal is permitted, the status quo ante the impugned legislation would not be possible if the petitioners succeed in the petition clearly establish the balance of convenience in favour of the petitioners.

3. Shri G. Vahanvati, the Solicitor General of India, appearing for the respondents, drawing attention to the order of the Apex Court passed on 27-9-2002 recording the fact of steps taken by the respondents for disposal

of the property in terms of the approval and sanction by the BIFR, and appreciating the implementation of the said scheme, submitted that the steps taken by the respondents for disposal of the property would apparently show that those acts are in consonance with the said scheme and in order to generate the resources to run the viable mills. He has further drawn attention to the fact that the petitioners have not been able to disclose any justification for the delay in approaching the Court when it was to the knowledge of the petitioners that the respondents were interested in disposing the properties including the land in question, as long back as in October, 2004 and the intention in that regard being made clear much prior thereto pursuant to the disposal of the machinery of the said mill.

4. Undisputedly, the challenge in the petition to the impugned legislation does not include the ground in relation to the events which have occurred subsequent to the filing of the petition. There is no specific challenge in the petition that the legislation is being bad in law either on account of the improper arrangement for the compensation to the owners of the mill or that pursuant to the takeover of the mill the respondents have been acting in contravention of the object for which the mill was sought to be nationalised.

5. It is also pertinent to note that since January,

2001 there was no interim relief of whatsoever nature against the respondents. Admittedly, whatever restraints which were imposed against the respondents were vacated by the Apex Court in January, 2001. The petitioners have not been able to explain either in the petition or in the course of the hearing of the notice of motion as to what prevented the petitioners from approaching the Court immediately after January, 2001 to seek the interim relief, if they so desired and if it was necessary to protect the interest of the petitioners in relation to the mill land in question.

6. It is pertinent to note that the petitioners had sought to take out Notice of Motion No.111 of 2003 in February, 2003 seeking relief in the nature of restraining the respondents from alienating or encumbering or creating third party rights in any of the assets, properties, etc., including land, plant and machinery of textile undertaking of the petitioner No.1-company of which management was taken over by the respondents on 18-10-1983 except for the purpose of running the textile mill. However, the said notice of motion was never moved before the Court nor even attempt was made in that regard. There is also no explanation as to what prevented the petitioners in moving the said motion and bringing the same before the Court during all this period prior to taking out the present notice of motion.

7. The notice of motion which was filed earlier for similar relief being not pursued with, the petitioners are not entitled to take out any notice of motion seeking similar relief and on that count also the present notice of motion is liable to be rejected.

8. Further undisputed facts are that the respondents have already disposed of the machinery in October, 2004 and the advertisement for disposal of the landed property was issued in October, 2004 itself. There is no explanation what prevented the petitioners from approaching the Court at that time for necessary relief if it was necessary to protect the interest of the petitioners. Being so, on the ground of laches themselves the notice of motion is liable to be rejected.

9. Even on merits there is no substance in the matter. Undisputedly, in terms of the BIFR scheme approved by the competent authorities and the order passed by the Apex Court on 27-9-2002 in Special Leave to Appeal (Civil) No.16732 of 1997 wherein the Apex Court has dismissed the said S.L.P. after taking note of the fact that the BIFR had already formulated scheme which stand approved by all concerned and with further observation that "let the scheme as sanctioned by the BIFR be implemented", reveal that the competent authority after

taking into consideration the fact that the mill in question being not viable has considered it necessary to be disposed of in order to enable the respondents to augment finance for running the viable mills. Prima facie therefore, the disposal of the property appears to be in consonance with the object for which the property was acquired. It is well-settled by a catena of decisions including the decisions which are sought to be relied upon by the learned Advocate for the petitioners that in order to attain the object for which property is taken over by the Government, the fulfilment of the object may be attained by utilising such property in different forms which could ensure the fulfilment of the object. Considering the same, it cannot be said that the utilisation of the finance which is to be raised pursuant to the disposal of the land in question for proper and effective running of the viable mills by the respondents would in any manner defeat the purpose and object of the said Act. Being so, it is not possible to accept the contention that the acts on the part of the respondents in disposing the property would virtually defeat the very object and the purpose of the legislation, at this stage.

10. As regards the contention that the disposal of the land would virtually result in non-availability of the property and impossibility in restoring the status quo ante to the petitioners in relation to the property and

that on that count the balance of convenience lies in favour of the petitioners, it is to be seen that before addressing to the issue of balance of convenience, in cases of relief in the nature of injunction, the party has to make out a prima facie case and only upon prima facie case being made out issue regarding the balance of convenience is to be considered. Merely because the balance of convenience may appear to tilt in favour of the petitioners, that by itself, in the absence of any prima facie case, would not justify the grant of any interim relief. Even otherwise, the contention on the point of the balance of convenience being in favour of the petitioners do not appeal to our mind in the facts and circumstances of the case. The contention of the petitioners is that with passage of time the legislation under challenge has lost its utility in the sense that the purpose for which the property of the petitioners was taken over does not survive any more. The contention is totally devoid of substance. As already observed above, the disposal of the property is essentially to attain the very purpose and object behind the impugned legislation. By disposing the unviable assets, the resources raised therefrom are going to be utilised for running of viable units and the running of the viable units is strictly for the purpose of augmenting production and securing employment. Being so and those being the objects of the impugned legislation and the same being sought to be attained by disposing

the property, we also find the balance of convenience tilting in favour of the respondents. Merely because status quo ante would not be possible even assuming that the petitioners succeed in the petition, that itself cannot be sole justification for grant of any interim relief of injunctive nature. The petitioners seeking such relief have necessarily to make out a prima facie case along with the balance of convenience in their favour and the petitioners in the case in hand having failed on both counts, it cannot be said that there is any case made out for grant of any interim relief in the matter.

11. In any case, it is undisputed fact that the respondents have clearly disclosed in their advertisement that the writ petition challenging the legislation is pending in this Court and the disposal of the property would be on as where is basis and as is what is basis. Being so, the purchaser has to purchase the property at his own risk knowing well about the challenge to the impugned legislation pending before this Court. In the circumstances, therefore, we do not find any case having been made out and, therefore, the notice of motion is liable to be dismissed and is accordingly dismissed with no order as to costs.

12. At this stage, learned Advocate for the petitioners prays for continuation of the ad-interim relief granted

on 12-7-2005. For the reasons stated above, we do not find any justification for continuation of such order.

Hence request is rejected.

13. Needless to say that all the observations made herein are prima facie observations for the purpose of disposal of the notice of motion.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**